

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

RICHARD ELLISON, :
Petitioner(s), :
Case Number: 1:07cv528
vs. :
District Judge Susan J. Dlott
WARDEN, LONDON CORRECTIONAL :
INSTITUTION, :
Respondent(s). :
:

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Timothy S. Black. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on August 28, 2008 a Report and Recommendation (Doc. 18). Subsequently, the petitioner filed objections to such Report and Recommendation (Doc. 25).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

Accordingly, petitioner's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 (Doc. 1) is **DENIED** with prejudice.

A certificate of appealability will not issue with respect to petitioner's claims alleged in Grounds One and Two of the petition, which this Court has concluded are barred from review on procedural waiver grounds, because "jurists of reason would not find it debatable as to whether

this Court is correct in its procedural ruling” under the first prong of the applicable two-part standard enunciated in *Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). Moreover, a certificate of appealability will not issue with respect to the ineffective assistance of appellate counsel claims alleged in Ground Three of the petition, because they neither state a “viable claim of the denial of a constitutional right” nor are “adequate to deserve encouragement proceed further.”

See Slack, 529 U.S at 475 (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.3 (1983)); *see also* 28 U.S.C. § 2253 (c); Fed. R. App. P. 22(b).

With respect to any application by petitioner to proceed on appeal *in forma pauperis*, the Court will certify pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of any Order adopting this Report and Recommendation will not be taken in “good faith,” and therefore **DENIES** petitioner leave to appeal *in forma pauperis* upon a showing of financial necessity. *See* Fed. R. App. P. 24(a); *Kincade v. Sparkman*, 117 F.3d 949, 952 (6th Cir. 1997).

IT IS SO ORDERED.

—s/Susan J. Dlott—
Susan J. Dlott
United States District Judge